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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,835	12/10/2003	Marc S. Hollander	AOL0114	8904
22862 7590 03/27/2008 GLENN PATENT GROUP 3475 EDISON WAY, SUITE L MENLO PARK, CA 94025				
EXAMINER BATURAY, ALICIA				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/733,835

Applicant(s)

HOLLANDER ET AL.

Examiner

Alicia Baturay

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date 03052008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the amendment filed 03 January 2008.
2. Claims 1, 2, 4 and 5 were amended.
3. Claims 3 and 6 were cancelled.
4. Claims 1, 2, 4 and 5 are pending in this Office Action.

Response to Amendment

5. The objection to the specification regarding hyperlinks was addressed and is withdrawn.
6. The objections to the specification regarding reference characters were addressed and are withdrawn.
7. The objections to the specification regarding minor informalities were addressed and are withdrawn.
8. The rejection of claims 2 and 3 under 35 U.S.C. § 112, 2nd paragraph regarding indefiniteness is addressed and withdrawn, and moot due to cancellation of aforementioned claim, respectively.
9. The rejection of claims 1-3 under 35 U.S.C. § 101 regarding non-statutory subject matter remains outstanding, and moot due to cancellation of aforementioned claim, respectively.
10. Applicant's amendments and arguments with respect to claims 1, 2, 4 and 5 filed on 03 January 2008 have been fully considered but they are deemed to be moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 101

11. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

12. Claims 1 and 2 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
13. With respect to claim 1, “A comprehensive and integrated music search and discovery system...comprising: a resource integrator client...a mega indexer platform...a DCI Today platform...and a server PreQueue platform...a display” appears to be directed to an arrangement that does not necessarily include hardware. The use of the word “system” does not inherently mean that the claim is directed toward a machine. Only if at least one of the claimed elements of the system is a physical part of a device can the system as claimed to constitute part of a device or a combination of devices to be a machine. In this claim, the recitation of “system” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). In claim 1, Applicant claims a system with software modules but does not define within the body of the claim the hardware in which the invention runs. The specification describes the

tool as working “in connection with personal computers, mobile devices, portable digital assistants (PDA's), or network enabled cell phones (see Specification, page 6, paragraph 21),” the mega indexer platform, the DCI Today platform and the server PreQueue platform as “primary software components (see Specification, page 10, paragraph 44)” and the display is not explicitly defined as hardware. All of these elements within the body of the claim may reasonably be implemented as software routines, and thus what is claimed is essentially a system of software per se which fails to fall into a statutory category of invention. Claim 2 fails to add any additional structure to the system, instead merely further limiting the intended use of the system. Thus, they fail to overcome the deficiencies of claim 1. Therefore, Claims 1-2 thus fail to fall within a statutory category of invention as they claim software per se.

The examiner encourages Applicant to define within the claims the embodied features and limitations on computer readable media such as hard drives, disks, and other hardware elements.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1, 2, 4 and 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Dunning et al. (U.S. 7,024,485) and further in view of Eyal (U.S. 6,725,275).

Dunning teaches the invention substantially as claimed including files are divided into parts and at least some of the parts are transmitted to a client using a communication channel. At least some of the transmitted parts are cached locally. This allows subsequent streaming playback of the file while using less bandwidth by transmitting the part of the file that hasn't been cached, and combining the cached parts with the transmitted parts. In some embodiments, files may be represented at a low quality level by a first data set, and at higher quality levels with additional data sets. Data sets are cached locally, so that during subsequent streaming playback of the file, the quality level of the playback may be improved by sending additional data sets using bandwidth that would otherwise be dedicated to transmitting the cached data sets (see Abstract).

16. With respect to claim 1, Dunning teaches a comprehensive and integrated media search and discovery system for allowing a user to find media information available from media services in one place, the system comprising: a mega indexer platform configured to version and bounce searchable runtime data structures across multiple systems, said mega indexer platform being atomic at the HTTP connection level (Dunning, col. 3, line 52 – col. 4, line 12); a DCI Today platform configured to integrate a Web server within a client process to provide a framework for secure client side Web applications, even while off line, said DCI Today platform comprising a small object configured to dynamically publish media content,

store meta data, and fetch and post data (Dunning, col. 13, lines 21-57); and a server PreQueue platform configured to minimize overhead associated with waiting for remote resources in a multi-threaded IO model and configured to complete tool common language integration for simultaneous access to memory and modules, said server PreQueue platform comprising a single prethreaded event based input/output blended with multi-threaded Web page execution (Dunning, col. 2, lines 35-45 and col. 7, line 39 – col. 8, line 16).

Dunning does not explicitly teach creating a display page of media information compiled from multiple sources.

However, Eyal teaches a resource integrator client configured to create a display page of media information compiled from multiple sources; and a display configured to present said display page (Eyal, Fig. 6; col. 12, line 41 – col. 13, line 17).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dunning in view of Eyal in order to enable creating a display page of media information compiled from multiple sources. One would be motivated to do so in order to enable a continuous streaming media playback from a distribution of sites available over a network such as the Internet.

17. With respect to claim 2, Dunning teaches the invention described in claim 1, including the system of further comprising: a media toolbox configured to generate recommendations based on a user's music preferences (Dunning, col. 13, lines 1-57).

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18. Claims 4 and 5 do not teach or define any new limitations above claims 1 and 2 and therefore are rejected for similar reasons.

Response to Arguments

19. Applicant's arguments filed 03 January 2008 have been fully considered, but they are not persuasive for the reasons set forth below.
20. ***Applicant Argues:*** Dunning, however, does not teach or suggest a system for displaying media information from multiple sources.

In Response: Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

21. ***Applicant Argues:*** Dunning does not teach or suggest a DCI Today platform that includes a small object configured to dynamically publish media content.

In Response: The examiner respectfully submits that Dunning teaches a DCI Today platform comprising a small object configured to dynamically publish media content (radio sequence generator uses track preferences to generate a sequence of tracks to be played – see Dunning, col. 13, lines 21-57). This renders the rejection proper, and thus the rejection stands.

22. ***Applicant Argues:*** Dunning does not teach or suggest a PreQueue platform configured [to] minimize overhead that includes a single prethreaded event based input/output blended with multi-threaded Web page execution.

In Response: The examiner respectfully submits that Dunning teaches a PreQueue platform comprising a single prethreaded event based input/output blended with multi-threaded Web page execution (The jukebox determines which program files are likely to be requested by the user...the jukebox requests the second parts of the files at a time when the connection is idle, or when sufficient bandwidth exists to transmit files...At a later time, when a user requests that a program file be streamed, the jukebox requests the first part of the program file...the jukebox combines the received first part with the stored second part to form a representation of the file and plays back the representation of the file – see Dunning, col. 2, lines 35-45 and col. 7, line 39—col. 8, line 16). This renders the rejection proper, and thus the rejection stands.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Baturay whose telephone number is (571) 272-3981. The examiner can normally be reached at 7:30am - 5pm, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alicia Baturay

March 27, 2008

/saleh najjar/

Supervisory Patent Examiner, Art Unit 2155